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KPNX-TV Channel 12, a division of
Multimedia Holdings Corp.; National
Press Photographers Association;
Phoenix Newspapers, Inc.; Scripps
Media, Inc. d/b/a KGUN-TV and d/b/a
KNXV-TV; States Newsroom/Arizona
Mirror; and Telemundo of Arizona LLC*

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

CV-22-1431-PHX-JJT

**PLAINTIFFS' MOTION FOR
DEFAULT JUDGMENT AND
MEMORANDUM IN SUPPORT**

Arizona Broadcasters Association, an Arizona
nonprofit corporation; American Civil
Liberties Union of Arizona, an Arizona
nonprofit corporation; Arizona Newspapers
Association, an Arizona nonprofit corporation;
Fox Television Stations, LLC; Gray Media
Group, Inc., d/b/a KTVK-KPHO and d/b/a
KOLD; KPNX-TV Channel 12, a division of
Multimedia Holdings Corp.; National Press
Photographers Association; Phoenix
Newspapers, Inc., an Arizona Corporation;
Scripps Media, Inc., an Ohio Corporation, d/b/a
KGUN-TV and d/b/a KNXV-TV; States
Newsroom/Arizona Mirror, a District of
Columbia nonprofit corporation; and
Telemundo of Arizona LLC, a Delaware
limited liability company;

Plaintiffs

Mark Brnovich, in his official capacity as
Attorney General for the State of Arizona;
Rachel Mitchell, in her official capacity as
Maricopa County Attorney; and Paul Penzone,
in his official capacity as Maricopa County
Sheriff;

Defendants.

Pursuant to Federal Rule of Civil Procedure 55(b)(2) and this Court's
November 22, 2022, Order, Plaintiffs move for Default Judgment against
Defendants Rachel Mitchell, in her official capacity as Maricopa County
Attorney; and Paul Penzone, in his official capacity as Maricopa County Sheriff
(collectively, the "County Defendants").

The County Defendants have failed to file an answer or other responsive
pleading by the deadline set by this Court, and the Clerk has entered default
against them. *See* Dkt. 55.¹ As a result, Plaintiffs are entitled to judgment against

¹ As the Court knows, the County Defendants' default was not due to any lack of diligence
on the part of the County Defendants or their counsel, but rather is the result of the County
Defendants declining to oppose the relief requested by Plaintiffs.

1 the County Defendants, and request that this Court enter judgment permanently
2 enjoining them from enforcing House Bill 2319, codified at A.R.S. § 13-3732
3 (“HB2319”) and declaring that HB2319 is unconstitutional.

4 Plaintiffs are entitled to judgment as a matter of law because HB2319
5 violates the First Amendment of the U.S. Constitution, as applied to the states
6 through the Fourteenth Amendment, for all of the reasons stated in Plaintiffs’
7 Complaint, Motion for Preliminary Injunction and Memorandum of Points and
8 Authorities in Support, as well as this Court’s September 9, 2022, Order granting
9 Plaintiffs’ request for a Preliminary Injunction in this matter, all of which are
10 incorporated herein by reference.

11 The Ninth Circuit has set forth the following factors for a court to consider
12 when deciding a motion for default judgment: (1) the merits of the plaintiff’s
13 substantive claim; (2) the sufficiency of the complaint; (3) the sum of money at
14 stake in the action; (4) the possibility of prejudice to the plaintiff; (5) the possibility
15 of a dispute concerning material facts; (6) whether the default was due to excusable
16 neglect; and (7) the policy favoring a decision on the merits. *Eitel v. McCool*, 782
17 F.2d 1470 (9th Cir.1986). These factors support an entry of default judgment
18 against the County Defendants in this case.

19 First, as this Court already has ruled, the Plaintiff’s case has merit. The
20 County Defendants declined to defend HB2319, and this Court granted Plaintiffs’
21 request for a preliminary injunction enjoining all Defendants from enforcing the
22 statute.

23 Second, the Complaint in this matter is sufficient, again as shown by this
24 Court’s ruling granting the preliminary injunction.

25 Third, there is no sum of money at stake in this action (other than a potential
26 award of attorneys’ fees subsequent to judgment being entered).

1 Fourth, Plaintiffs would be severely prejudiced if default judgment were not
2 entered against the County Defendants. If a government actor could forestall a
3 permanent injunction and declaratory judgment against enforcing an
4 unconstitutional statute merely by declining to oppose a lawsuit challenging that
5 statute, the Constitution's guarantees of liberty would be hollow gestures.

6 Fifth, there is no dispute of material facts because the County Defendants
7 have affirmatively chosen not to oppose Plaintiff's pleadings.

8 Sixth, the default was not due to excusable neglect but was due to an
9 affirmative decision by the County Defendants not to defend a facially
10 unconstitutional statute.

11 Seventh, the County Defendants had an opportunity to argue the merits at
12 the preliminary injunction stage but chose not to do so.

13 In sum, all of the *Eitel* factors support an entry of default judgment in this
14 matter against the County Defendants.

15 For all of the foregoing reasons, Plaintiffs therefore respectfully request
16 that this Court:

17 1) Enter a permanent injunction, enjoining the County Defendants and
18 their officers, agents, servants, employees, and attorneys, and those persons in
19 active concert or participation with them who receive actual notice of the
20 injunction, from taking any action to enforce HB2319; and

21 2) Issue a declaratory judgment that HB2319 on its face violates the
22 First Amendment of the United States Constitution, as applied to the states
23 through the Fourteenth Amendment.

24 A proposed form of judgment is attached.
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26
27
28

1 Dated this 1st day of December 2022.

2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
3 OF ARIZONA

4 By: /s/ Jared G. Keenan

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23 *Television Stations, LLC; Gray Media Group, Inc.*
24 *d/b/a KTVK-KPHO and d/b/a KOLD; KPNX-TV*
25 *Channel 12, a division of Multimedia Holdings*
26 *Corp.; National Press Photographers Association;*
27 *Phoenix Newspapers, Inc.; Scripps Media, Inc. d/b/a*
28 *KGUN-TV and d/b/a KNXV-TV; States*
Newsroom/Arizona Mirror; and Telemundo of
Arizona LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2022, copies of the attached Plaintiffs' Motion for Default Judgment were served on Defendants via CM/ECF.

/s/ Matthew E. Kelley